THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.20268 of 2006

Date: 19.06.2007

Between:

Md. Zulfekhar.

....Petitioner

And

Assistant Registrar cum Sale Officer and others.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.20268 of 2006

O R D E R:

The petitioner challenges the action of the first respondent in conducting the auction, for sale of property bearing No.1-4-905/5/1, I Floor, Bakaram, Musheerabad, Hyderabad.

The petitioner offered the property, referred to above, for sale to the second respondent. The latter, in turn, had approached the third respondent for loan to purchase that property. The application was processed by the third respondent and a pay order, dated 07.08.2002, for a sum of Rs.6,00,000/- representing the consideration for the property, was issued to the second respondent, for onward transmission to the petitioner. A sale deed, dated 13.08.20026, is said to have been executed in favour of the second respondent.

The petitioner contends that when he presented the pay order to the third respondent for encashment, he was asked to come on the next day, but on the next day, he

was informed that the amount was discharged towards the loan payable by the second respondent. Reference is made to the other forms of part payments said to have been made by the second respondent.

The petitioner contends that he filed O.S.No.1520 of 2004 in the Court of V Senior Civil Judge, City Civil Court, Hyderabad, for a declaration that the sale deed, dated 13.08.2002, which, in turn, is deposited, as a measure of mortgage, with the third respondent is null and void and for a consequential injunction restraining them from interfering with his possession. The said property is sought to be sold by the first respondent, at the instance of the third respondent, for recovery of certain amount payable by the second respondent. Hence, this Writ Petition.

Though the second respondent is served with notice, he has not chosen to file any counter affidavit. On behalf of the third respondent, a counter affidavit is filed, denying the allegations of the petitioner. It is stated that an amount of Rs.6,00,000/- was advanced to the second respondent for purchase of the property, on condition that the sale deed is deposited, as a measure of equitable mortgage; and since the amount covered by the mortgage was not repaid, the property is put to auction.

Heard Sri C.Raghu, the learned counsel for the petitioner, the learned Government Pleader for Co-operation appeared for the first respondent and Sri Sainathan, the learned counsel for the third respondent.

This Court cannot decide the validity or otherwise of the transaction, that took place among the petitioner, the second respondent and the third respondent. From the facts pleaded by the parties, it emerges that the second respondent approached the third respondent for finances, to enable him to purchase the property from the petitioner. A sum of Rs.6,00,000/- was sanctioned and a pay order was issued to him for being transmitted to the petitioner. The sale transaction has also taken place on 13.08.2002.

Had the amount covered by the pay order been paid to the petitioner, there would not have been any occasion to doubt the right of the third respondent to bring the mortgaged property to sale. Even from the pleadings, it is evident that the amount covered by the pay order was not passed on to the petitioner. While it is contended by the petitioner that he was not paid any amount at all, when he presented the pay order, the third respondent contends that the second respondent himself surrendered the pay order. The net result is that the very basis for the loan

transaction between the second respondent and third respondent, for purchase of the property, referred to above, becomes shaky.

At any rate, the suit filed by the petitioner, as regards the legality of the sale deed, is pending in a Civil Court. If the suit schedule property is sold, even while the suit is pending, the rights of the parties are naturally affected. The interests of the third respondent can be protected, by keeping the mortgage in tact, but by directing that the sale of the property shall not be resorted to, till the suit is decided either way. The reason is that the right of the third respondent, to redeem the mortgage, would depend upon the title of the second respondent.

For the foregoing reasons, the Writ Petition is disposed of, directing that the respondents shall not proceed with the sale of the property bearing 1-4-905/5/1, until O.S.No.1520 of 2004 in the Court of V Senior Civil Judge, City Civil Court, Hyderabad is disposed of. The further proceedings would depend upon the outcome of the suit. It is made clear that if the highest bidder of the property is willing to wait, till the disposal of the suit, the amount can be held by the authority concerned, and on the other hand, if he is not willing to wait, till that date, it shall be open to respondents 1 and 3 to refund the said

amount. There shall be no order as to costs.

19.06.2007

JSU